


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Attorneys for Plaintiff
Marylou Mancini

FILED
2008 FEB -8 PM 4:39
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARYLOU MANCINI,

Plaintiff,

v.

CIR LAW OFFICES LLP,

Defendant.

Case No.: '08 CV 0241 LAB CAB

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to

ORIGINAL

protect consumers against debt collection abuses.¹

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.²
3. MARYLOU MANCINI, ("Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of CIR LAW OFFICES LLP, ("Defendant"), with regard to attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
4. Unless otherwise indicated, these allegations are made on information and belief. Further, the use of any defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of that defendant named. All allegations are made on information and belief, except those allegations that pertain to the named Plaintiff(s), or to their attorneys, which are alleged on personal knowledge.

JURISDICTION AND VENUE

5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.
6. This action arises out of Defendant's violations of the following: the

¹ 15 U.S.C. §§ 1692(a)-(e)

² Cal. Civ. Code §§ 1788.1 (a)-(b)

Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (RFDCPA), the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.

7. Because Defendant does business within the State of California, personal jurisdiction is established.
8. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

9. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California and is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
10. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).
11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a company operating from the City of San Diego, County of San Diego, State of California.
12. Plaintiff is informed and believes, and thereon alleges, that Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).
13. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by California Civil Code § 1788.2(c).

14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

15. At all times relevant, Plaintiff was an individual residing within the State of California.
16. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California.
17. Sometime before January 1, 2007, Plaintiff allegedly incurred financial obligations to Capital One Bank that were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and were therefore "debt(s)" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).
18. These financial obligations were primarily for personal, family or household purposes and are therefore "debt(s)" as that term is defined by 15 U.S.C. §1692a(5).
19. Sometime thereafter, but before January 1, 2007, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to whether or not this alleged debt was actually owed.
20. Plaintiff is informed and believes, and thereon alleges, that subsequently, but before January 1, 2007, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
21. On or about January, 2007, Defendant contacted Plaintiff by telephone and demanded payment of the alleged debt.

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- 1 22. This telephone call to Plaintiff, by Defendant, was a "communication" as that
2 term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that term is
3 defined by Cal. Civ. Code 1788.2(b), and an "initial communication"
4 consistent with 15 U.S.C. § 1692g(a) and Cal. Civ. Code § 1812.700(b).
- 5 23. During this conversation, Plaintiff informed Defendant that an attorney
6 represented Plaintiff. Plaintiff then provided Defendant with the name and
7 contact information of her attorneys.
- 8 24. On or about late January 2007, Defendant again contacted Plaintiff in an
9 attempt to collect the alleged debt.
- 10 25. By communicating with Plaintiff with regard to the alleged debt without the
11 prior consent of Plaintiff given directly to Defendant or the express
12 permission of a court of competent jurisdiction, when Defendant knew or
13 should have known that Plaintiff was represented by an attorney and when
14 Defendant had knowledge of or could have readily ascertained the name and
15 address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§
16 1692c(a)(2), 1692d, and 1692f and Cal. Civ. Code § 1788.17.
- 17 26. Throughout the months of January, February, March, April and May,
18 Defendant continually contacted Plaintiff by telephone in an attempt to collect
19 the alleged debt.
- 20 27. During each communication, Plaintiff informed Defendant that an attorney
21 represented Plaintiff.
- 22 28. Even when Defendant left messages for Plaintiff, Plaintiff would call
23 Defendant back and request they only speak to her attorney.
- 24 29. By communicating with Plaintiff with regard to the alleged debt without the
25 prior consent of Plaintiff given directly to Defendant or the express
26 permission of a court of competent jurisdiction, when Defendant knew or
27 should have known that Plaintiff was represented by an attorney and when
28 Defendant had knowledge of or could have readily ascertained the name and

address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

30. Because these repeated communications violate the FDCPA, including, but not limited to, 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f, they also violated Cal. Civ. Code §1788.17.

31. Defendant's continued calls despite Plaintiff's repeated request that they contact Plaintiff's attorney caused Plaintiff a great deal of stress, anxiety, and even the fear of answering the telephone.

32. On or about May 4, 2007, Defendant sent, and Plaintiff received, a dunning letter addressed to Plaintiff's home and in the name of Defendant.

33. By communicating with Plaintiff with regard to the alleged debt without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction, when Defendant knew or should have known that Plaintiff was represented by an attorney and when Defendant had knowledge of or could have readily ascertained the name and address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

34. Because this May 4, 2007 communication violates the FDCPA, including, but not limited to, 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f, it also violated Cal. Civ. Code §1788.17.

35. On or about June 26, 2007, Defendant filed suit on behalf of Capital One Bank against Plaintiff for the alleged debt.

36. This June 26, 2007 lawsuit was filed in the County of Orange even though Defendant was aware that Plaintiff resided in the County of San Diego and that any contract was entered was not entered into in Orange County.

37. By bringing a legal action on a debt against a consumer in a location other than the County Plaintiff currently resides in or where the contract was entered into, Defendant violated 15 U.S.C. § 1692i(a)(2).

38. Because this action violated 15 U.S.C. § 1692i(a)(2), it also violated Cal. Civ. Code §1788.17.

39. Plaintiff is informed and believes, and thereon alleges, that on or about July 11, 2007 Defendant attempted to mail Defendant a copy of the June 26, 2007 Summons and Complaint at Plaintiff's former address in Huntington Beach, California.

40. Plaintiff is informed and believes, and thereon alleges, that this envelope was returned to Defendant as undeliverable, again alerting Defendant that Plaintiff did not reside in Orange County.

41. On or about July 26, 2007, a copy of the June 26, 2007 Summons and Complaint was left in Plaintiff's mailbox in San Diego, California.

42. The envelope containing the Summons was addressed to Plaintiff's former address in Huntington Beach, California, and "Return to Sender NOT at this address" was handwritten across the envelope.

43. Plaintiff is informed and believes, and thereon alleges, that this envelope was not sent via the United States Postal Service, but was put directly into Plaintiff's mailbox in San Diego, California.

44. On or about September 21, 2007 Defendant entered a default judgment against Plaintiff.

45. Entering a default judgment against Plaintiff, when Defendant knew Plaintiff had not been properly served was a false, deceptive, or misleading representation or means in connection with the collection of any debt in violation of 15 U.S.C. § 1692e, and 15 U.S.C. § 1692e(10), and an unfair or unconscionable means to collect or attempt to collect an alleged debt in violation of 15 U.S.C. § 1692f.

46. Because this action violated the FDCPA, it also violated Cal. Civ. Code §1788.17.

CAUSES OF ACTION CLAIMED BY PLAINTIFF

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 ET SEQ.

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3
4 47. Plaintiff incorporates by reference all of the above paragraphs of this
5 Complaint as though fully stated herein.
6 48. The foregoing acts and omissions constitute numerous and multiple violations
7 of the FDCPA, including but not limited to each and every one of the above-
8 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
9 49. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
10 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
11 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
12 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
13 each Defendant.

COUNT II

VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

- 14
15
16
17 50. Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.
19 51. The foregoing acts and omissions constitute numerous and multiple violations
20 of the RFDCPA.
21 52. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
22 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
23 damages for a knowing or willful violation in the amount up to \$1,000.00
24 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and
25 costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant.

26 //

27 //

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an amount to be adduced at trial, from Defendant;
- an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

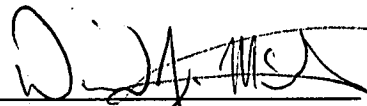
- an award of actual damages pursuant to California Civil Code § 1788.30(a) in an amount to be adduced at trial, from Defendant;
- an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
- an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: 2/8/8

Respectfully submitted,
HYDE & SWIGART

By: 
David J. McGlothlin, Esq.
Attorney for Plaintiff

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

MARYLOU MANCINI,

DEFENDANTS

CIR LAW OFFICES LLP.,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David J. McGlothlin (8BN: 253265)
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 619-233-7770

ATTORNEYS (IF KNOWN)

Unknown

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDCPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions | | | |

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$ 75000

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 2/8/08

SIGNATURE OF ATTORNEY OF RECORD

147428 \$350.
2/8/08 *fr*

W. J. M.

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**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147428 - SR

**February 08, 2008
15:40:15**

Civ Fil Non-Pris

USAO #.: 08CV0241 CIV. FIL. -

Judge.: LARRY A BURNS

Amount.:

\$350.00 CK

Check#.: BC#2287

Total-> \$350.00

**FROM: MANCINI V. CIR LAW OFFICES
CIVIL FILING**